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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/597,318 06/19/00 VENEGAS

F IDS-10505/14

EXAMINER

PM82/0822

JOHN G POSA ESQ
GIFFORD KRASS GROH SPRINKLE
ANDERSON & CITKOWSKI P C
280 N WOODWARD AVENUE SUITE 400
BIRMINGHAM MI 48009

YIP, W

ART UNIT

PAPER NUMBER

3635
DATE MAILED:

08/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/597,318

Applicant(s)

Frank Venegas, Jr.

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 20) ☐ Other:

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DETAILED ACTION

This is a first office action for application Serial No. 09/597,318 filed June 19, 2000.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-2 are rejected under the judicially created doctrine of double patenting over claims 1, 4 and 17 of U. S. Patent No. 5,2353,583 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

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The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: an elongated member and a sleeve with interior cavity to be slip fitted to the elongated member.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 U.S.C. § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

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4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Deike (US patent No. 4,021,977).

Deike shows and discloses a stanchion comprising an elongated member (12) having a first end being secured to a fixed anchor (11) which is fixed into the ground and a second end extending over the fixed anchor (11), a sleeve (13) having an elongated body having an opened first end, a closed second end with a closed hemispherically shaped cap (15), and an interior cavity extending therebetween, the interior cavity having a cross-sectional shape being slip fitted in an engagement with an upper portion of the stanchion, wherein the sleeve at least partially encases the upper portion of the stanchion.

In regard to claim 2, Deike disclose the sleeve being elastically slip fitted onto the stanchion inherently by suitable force.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Meister et al. (US patent No. 1,903,869).

Meister et al. shows and discloses a stanchion (see Fig. 3) comprising an elongated member (8) having a first end being secured the ground and a second end extending over the ground, a sleeve (9) having an elongated body having an opened first end, a

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closed second end with a closed hemispherically shaped cap (4), and an interior cavity extending therebetween, the interior cavity having a cross-sectional shape being elastically slip fitted in an engagement with an upper portion of the stanchion, wherein the sleeve is inherently forced into and at least partially encases the upper portion of the stanchion.

6. Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Arth, Jr. (US patent No. 5,299,883).

Arth, Jr. shows and discloses a stanchion comprising an elongated member (16) having a first end being adapted to be secured to a fixed structure such as the ground and a second end adapted to be extended over the fixed structure, a sleeve (18) having an elongated body having an opened first end, a closed second end with a closed hemispherically shaped cap (20), and an interior cavity extending therebetween, the interior cavity having a cross-sectional shape including a locking lip being elastically slip fitted in an engagement with an upper portion of the stanchion, and the sleeve being inherently forced into and at least partially encases the upper portion of the stanchion.

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Citations

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, however, does not read on applicant's claims.

Roach, Jr. '405, Gustafsson '330, Almond '864, Beatty '756, and Barrett et al. '781 teach various stanchions having elongated member covered by a sleeve as similar to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Yip whose telephone number is (703) 308-2491. The examiner can normally be reached on Mondays through Friday from 9:30 AM to 6:30 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113. The Fax phone number for this Group is (703) 305-7687.


Winnie Yip
Patent Examiner
Group Art Unit 3635

August 16, 2001